

The Center for
Financial Services Innovation

An Initiative of ShoreBank Advisory Services

November 19, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Regs.comments@federalreserve.gov
Re: Docket No. R-1210

Dear Ms. Johnson:

The Center for Financial Services Innovation (CFSI) appreciates this opportunity to comment on the Board of Governors of the Federal Reserve System's Proposed Rule on Electronic Funds Transfers (Regulation E; Docket R-1210). CFSI, which is an initiative of ShoreBank Advisory Services, was launched in 2004 with support from the Ford Foundation to support the creation of asset-building opportunities for underbanked populations that create value for both customer and company.

CFSI has been actively engaged in following the evolution of the stored value card (SVC) industry and its potential to help underbanked consumers build assets by marrying transactional behavior with longer-term wealth building strategies. Over the last several months, CFSI has conducted in-depth interviews with a variety of leaders in the SVC industry, including bank issuers, processors, and distributors of SVCs. The following comments represent our views, which are informed by the industry's perspective.

We note that payroll cards, as defined by the Board, are a significant subset of the stored value card space. We support the Board's inclusion of "payroll card account" as part of the definition of "account" in section 205.2(b)(3) regardless of whether the account is provided by a third-party payroll card processor, employer, or depository institution.¹ We concur that one-time use cards, such as those issued for bonuses or petty cash, do not

¹ The Board's proposed definition will include: "205.2(b)(1)(3): The term includes a "payroll card account" directly or indirectly established by an employer on behalf of a consumer to which electronic funds transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution.



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need to be included in the definition. The broad definition of “account” under the EFTA includes “a demand deposit, savings deposit, or other asset account...as described in regulations of the Board, established primarily for personal, family or household purposes.” Payroll cards definitely fit into this definition. The preamble also cites as a reason to extend Regulation E to payroll cards that they are “assigned to an identifiable consumer, represent a stream of payments to a consumer, are replenished on a recurring basis and can be used in multiple locations for multiple purposes, and utilize the same kind of access devices, electronic terminals and networks as do other EFT services.” (Docket R1210, pp. 6-7.)

We note that this language also describes other types of reloadable prepaid debit cards that are not issued by employers but nonetheless have the capacity to serve as substitutes for checking accounts. The cited language is not included in the proposed definition of “account.” Nevertheless, if the Board in fact intends the cited language to be a basis for determining whether Regulation E applies to a particular SVC (perhaps in later staff commentary), it would be useful to state this and request comments on it specifically. Developments in the SVC industry are fairly quickly eroding the distinctions between payroll cards and other types of reloadable prepaid cards.

The Board has requested comment on whether the definition of “account” for Regulation E purposes should depend on whether “a payroll account holds consumer funds that qualify as eligible ‘deposits’” under the Federal Deposit Insurance Act. (Docket R1210, p. 9.) While there is some attractiveness to this concept, we believe that in an evolving area, tying one set of regulations issued by one federal regulator to another set of regulations issued by another federal regulator for a different purpose can have unintended consequences. Thus, while the Federal Reserve and the Federal Deposit Insurance Corporation should consult with each other to help ensure consistency of consumer expectations about the degree of protection they have for funds represented by SVCs, we would recommend against an explicit tying of the two sets of regulations.

Beyond the new proposed definition of “account,” the Board has also requested comments on the ways that Regulation E pertains to payroll cards. Based on our conversations with leaders in the SVC industry, we are concerned that the portion of Regulation E that requires periodic statements may be far less effective in protecting consumers by informing them about transactions and balances than real-time alternatives. In addition, industry leaders feel that the cost of providing regular paper statements goes beyond incremental, particularly for third-party and employer sponsors of payroll cards. CFSI feels that providing alternative ways to offer periodic statements is one of the surest ways to encourage responsible innovation in the industry. And there is clear precedent for providing an alternative to periodic statements.

In section 205.15(c)(1) and (2) of Regulation E, the Board established alternatives to periodic statements for EFT transactions. For EFT transactions, a government agency need not provide a periodic statement if it provides the consumer’s account balance through a readily available telephone line and at a terminal; and a written history of the

consumer's account transactions promptly in response to an oral or written request, that covers at least 60 days preceding the date of a request by the consumer.

We suggest that these alternatives to periodic statements be extended to "payroll card accounts" under Regulation E. This extension could help "minimize the burden of information collection on respondents through the use of automated collection techniques or other forms of information technology" as suggested in page 26 of Docket R-1210. Industry experts have mentioned additional alternative ways to provide information to consumers, such as text messaging transaction history via cell phone. We encourage the Board to consider adopting language that covers a broad range of alternatives, including but not limited to those listed here, for payroll card accounts as well. Consumers should be able to access information related to transaction history once a month free of charge through these alternative means.²

If EBT-like rules for statements were adopted, parallel special rules for initial disclosures should also be required. (See 12 CFR §205.25(d)(1)(i) and (ii).) These include disclosures on how consumers are able to access balances and obtain a written account history. Alternatives to paper periodic statements, in combination with the disclosures described above, should ensure adequate and effective protection of consumers while keeping in check the burden on financial institution, third party and employer providers of payroll cards, thus continuing to encourage innovation.

Thank you for the opportunity to comment on this important matter. Please contact Jennifer Tescher at the Center for Financial Services Innovation at 312-881-5818 if you have any questions or require further information.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Tescher', with a stylized, flowing script.

Jennifer Tescher
Director

² The stored value card provider or financial institution should not levy a charge for this transaction history inquiry. However, if alternative means are used, other providers might levy a fee. For example, cell phone providers might charge for use of text messages.